

Module 4: Statutory and Regulatory Requirements of a VESCP Authority

Module 4 Objectives

After completing this module, you will be able to:

- Identify the requirements for establishing a Virginia Erosion and Sediment Control Program
- Understand the plan review and approval process
- Determine appropriate enforcement measures

Module 4 Content:

4a. Statutory and Regulatory Requirements: Virginia Erosion and Sediment Control Program Law and Regulations

4b. Establishing a Virginia Erosion and Sediment Control Program

4c. Approved Plan Requirements


4d. Inspections and Enforcement

4e. DEQ Compliance Review of a VESCP


4a. Statutory and Regulatory Requirements: Virginia Erosion and Sediment Control Law and Regulations

The Virginia Erosion and Sediment Control Law (VESCL) authorizes the Virginia Erosion and Sediment Control Program (VESCP) and associated regulations. The regulations explain the technical, operational, and legal details necessary to implement the law.

Sections 4a, 4b, 4c, 4d, and 4e of this module bring together the VESCL and regulations (VESCR) to provide an overview of the requirements for establishing a VESCP, the plan review process, inspection requirements, enforcement procedures, and DEQ's compliance review.



The Virginia Erosion and Sediment Control Law is Va. Code § [62.1-44.15:51](#) through § [62.1-44.15:66](#) and the regulations are [9VAC25-840-10](#) through [9VAC25-840-110](#).



Purpose of the Law

The stated intent of the law is “for the effective control of soil erosion, sediment deposition, and non-agricultural runoff to prevent the unreasonable degradation of properties, stream channels, waters and other natural resources”

Definitions

The VESCL and regulations include a list of terms with their legal meanings and how they are to be applied to erosion and sediment control. The following list includes the more pertinent definitions from the law ([Va. Code § 62.1-44.15:51](#)).

“Agreement in lieu of plan”

A contract between the plan-approving authority and the owner that specifies conservation measures that must be implemented in the construction of a single-family residence

“Erosion and sediment control plan” or “plan”

A document containing material for the conservation of soil and water resources of a unit or group of units of land. It may include appropriate maps, an appropriate soil and water plan inventory and management information with needed interpretations, and a record of

decisions contributing to conservation treatment. The plan shall contain all major conservation decisions to ensure that the entire unit or units of land will be so treated to achieve the conservation objectives.

"Erosion impact area"

An area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition shall not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

"Land-disturbing activity"

Means any man-made change to the land surface that may result in soil erosion from water or wind and the movement of sediments into state waters or onto lands in the Commonwealth, including, but not limited to, clearing, grading, excavating, transporting, and filling of land, except that the term **shall not** include:

1. Minor land-disturbing activities such as home gardens and individual home landscaping, repairs, and maintenance work;
2. Individual service connections;
3. Installation, maintenance, or repair of any underground public utility lines when such activity occurs on an existing hard surfaced road, street, or sidewalk, provided the land-disturbing activity is confined to the area of the road, street, or sidewalk that is hard surfaced;
4. Septic tank lines or drainage fields unless included in an overall plan for land-disturbing activity relating to construction of the building to be served by the septic tank system;
5. Permitted surface or deep mining operations and projects, or oil and gas operations and projects conducted pursuant to Title 45.1;
6. Tilling, planting, or harvesting of agricultural, horticultural, or forest crops, livestock feedlot operations, or as additionally set forth by the Board in regulation, including engineering operations as follows: construction of terraces, terrace outlets, check dams,

de-silting basins, dikes, ponds, ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation; however, this exception shall not apply to harvesting of forest crops unless the area on which harvesting occurs is reforested artificially or naturally in accordance with the provisions of Chapter 11 (Va. Code § 10.1-1100 et seq.) of Title 10.1 or is converted to bona fide agricultural or improved pasture use as described in subsection B of Va. Code §10.1-1163;

7. Repair or rebuilding of the tracks, rights-of-way, bridges, communication facilities, and other related structures and facilities of a railroad company;
8. Agricultural engineering operations, including but not limited to the construction of terraces, terrace outlets, check dams, de-silting basins, dikes, ponds not required to comply with the provisions of the Dam Safety Act (§ 10.1-604 et seq.), ditches, strip cropping, lister furrowing, contour cultivating, contour furrowing, land drainage, and land irrigation;
9. Disturbed land areas of less than 10,000 square feet in size or 2,500 square feet in all areas of the jurisdictions designated as subject to the Chesapeake Bay Preservation Area Designation and Management Regulations; however, the governing body of the program authority may reduce this exception to a smaller area of disturbed land or qualify the conditions under which this exception shall apply;
10. Installation of fence and sign posts or telephone and electric poles and other kinds of posts or poles;
11. Shoreline erosion control projects on tidal waters when all of the land-disturbing activities are within the regulatory authority of and approved by local wetlands boards, the Marine Resources Commission, or the United States Army Corps of Engineers; however, any associated land that is disturbed outside of this exempted area shall remain subject to this article and the regulations adopted pursuant thereto; and
12. Emergency work to protect life, limb, or property, and emergency repairs; however, if the land-disturbing activity would have required an approved erosion and sediment control plan, if the activity were not an emergency, then the land area disturbed shall be shaped and stabilized in accordance with the requirements of the VESCP authority.

"Virginia Erosion and Sediment Control Program Authority" or "VESCP authority"

An authority approved by the Board to operate a Virginia Erosion and Sediment Control Program. An authority may include a state entity, including the Department; a federal entity; a district, county, city, or town; or for linear projects subject to annual standards and specifications, electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, railroad companies, or authorities created pursuant to § 15.2-5102.

4b. Establishing a Virginia Erosion and Sediment Control Program

As a Dillon Rule state, the Commonwealth – through the passage of the VESCL - delegates to localities the authority to implement and administer a Virginia Erosion and Sediment Control Program. This section of the module discusses the roles and responsibilities of the State Water Control Board and the requirements for adopting and administering a VESCP.

Power and duties of the State Water Control Board

[\(VA Code § 62.1-44.15:52\)](#)

The VESCL authorizes the State Water Control Board to:

- Develop an erosion and sediment control program
- Adopt regulations for the effective control of soil erosion, sediment deposition, and nonagricultural runoff
- Provide technical assistance for VESCP authorities
- Establish minimum standards for program effectiveness
- Approve VESCP authorities
- Conduct periodic program compliance reviews
- Issue certificates of competence

Adopting and administering a VESCP

[\(VA Code § 62.1-44.15:54\)](#)

Counties and cities **must** adopt and administer a VESCP. A town within a county that has adopted a VESCP may choose to adopt its own program or it must become subject to the county's program. Any VESCP adopted by a locality shall be approved by the Board if it establishes by ordinance requirements that are consistent with the VESCL and VESCP Regulations.

A VESCP authority may enter into agreements or contracts with soil and water conservation districts, adjacent localities, or other public or private entities to assist with carrying out the provisions of the article ([VA Code §62.1-44.15:58](#)).

Must adopt a VESCP	<ul style="list-style-type: none">• Counties• Cities
May adopt a VESCP	<ul style="list-style-type: none">• Towns• State entities• Federal entities
May operate a VESCP through annual standards and specifications	<ul style="list-style-type: none">• State entities• Federal entities• Linear projects*

* Linear projects subject to annual standards and specifications: electric, natural gas, telephone, and railroad companies, or authorities

Administration fees

([VA Code §62.1-44.15:54](#))

Any VESCP authority may charge applicants a reasonable fee to defray the cost of program administration. Such fee may be in addition to any fee charged for administration of a Virginia Stormwater Management Program, although payment of fees may be consolidated in order to provide greater convenience and efficiency for those responsible for compliance with the programs.

VESCP personnel

([VA Code §62.1-44.15:53](#))

A VESCP must contain the following certified personnel, or have one person who is certified in all areas below:

Certified program administrator: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of program administration or is enrolled in the Board's training program for program administration and successfully completes such program within one year after enrollment.

- Ensures plan review and approval, inspections, and enforcement actions are conducted in accordance with the VESCL, regulations, and local ordinances
- Completes annual report
- Checks for maintenance provisions (if applicable)
- Coordinates enforcement proceedings
- Keeps records, collects fees, and updates local ordinances as needed

Certified inspector: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of project inspection or is enrolled in the Board's training program for project inspection and successfully completes such program within one year after enrollment

- Conducts regular inspections of active construction sites to ensure proper construction, function, and maintenance of BMPs and other erosion and sediment control measures
- Documents inspections
- Initiates enforcement action when needed
- Ensures compliance to correct deficiencies or violations

Certified plan reviewer: an employee or agent of a VESCP authority who holds a certificate of competence from the Board in the area of plan review, is enrolled in the Board's training program for plan review and successfully completes such program within one year after enrollment, or is licensed as a professional engineer, architect, landscape architect, land surveyor, or professional soil scientist

- Responsible for review of erosion and sediment control plans to ensure plans adhere to the regulations, minimum standards, and local ordinances

Combined administrator: responsible for performing the combined duties of a program administrator, plan reviewer and project inspector of a VESCP authority

Assistance with VESCP responsibilities

(VA Code § 62.1-44.15:58)

A VESCP authority can enter into agreements or contracts with districts, adjacent localities, or other public or private entities to assist with the responsibilities of the VESCL, including but not limited to the review and determination of adequacy of ESC plans submitted for LDAs as well as monitoring, reports, inspections, and enforcement where an authority is granted such powers by the VESCL.

More stringent regulations or ordinances

(VA Code § 62.1-44.15:65)

Localities are authorized to adopt ordinances that are more stringent than what is necessary to ensure compliance with the state regulations, provided the more stringent ordinances are based upon factual findings of local or regional comprehensive watershed management studies or findings developed through the implementation of an MS4 permit or a locally adopted watershed management study.

Additionally, the more stringent ordinances must be necessary to:

- Prevent any further degradation to water resources,
- Address total maximum daily load requirements,
- Protect exceptional state waters, or
- Address specific existing water pollution including:
 1. Nutrient and sediment loadings
 2. Stream channel erosion
 3. Depleted groundwater resources
 4. Excessive localized flooding within the watershed

Before adopting more stringent regulations or ordinances, a public hearing must be held after giving due notice.

The VESCP authority shall report to the Board when more stringent stormwater management regulations or ordinances are necessary.

★ Any erosion and sediment control program that was in existence before July 1, 2012 and contains more stringent provisions is exempt from meeting the requirements listed above.

Adopting civil penalties through ordinances or regulation

(VA Code [§62.1-44.15:54](#))

The governing body of any VESCP authority that is a county, city, or town, or a district board may adopt an ordinance or regulation for civil penalties.

★ Adoption of an ordinance for violations that are subject to a civil penalty replaces criminal sanctions and the prosecution of such violation as a misdemeanor (discussed in Module 4d).

Integrating VESCP with other local programs

(VA Code [§62.1-44.15:54](#))

Each locality's VESCP must provide provisions for integrating the VESCP with stormwater management, flood insurance, flood plain management, and other programs requiring compliance before authorization to start a LDA. This is to make the submission and approval of plans, issuance of permits, payment of fees, and coordination of inspection and enforcement activities more convenient and efficient.

Reporting to DEQ

(VA Code [§62.1-44.15:59](#))

Each VESCP authority shall report to DEQ on a time schedule established by the Department a listing of each LDA for which an ESC plan has been approved by the VESCP.

Annual standards and specifications

(VA Code [§62.1-44.15:55](#))

Electric, natural gas, and telephone utility companies, interstate and intrastate natural gas pipeline companies, and railroad companies must submit annual standards and specifications to DEQ for review and approval, while authorities created pursuant to [§15.2-5102](#) (ex. water, sewer, etc., authorities) may submit annual standards and specifications to DEQ for review and approval.

Virginia Stormwater Management Act includes specific requirements for which entities must submit annual standards and specifications to DEQ and what must be submitted. See [§ VA Code 62.1-44.15:31](#) for more information.

Annual standards and specifications must be consistent with the VESCL and associated regulations and the Virginia Stormwater Management Act and associated regulations. Standards and specifications must be filed [annually](#) with DEQ. The Department has [60 days](#) to approve. If no action is taken by DEQ within the 60 days, the standards are deemed approved.

★ Project activities covered under annual standards and specifications do not need individual approval when DEQ approved specifications are followed.

Annual Standards and Specifications

Table 4-1

Must submit	May submit
Electric companies	Authorities created under §15.2-5102 (ex. water or sewer authority)
Natural gas companies	
Telephone utility companies	State and federal entities
Interstate and intrastate natural gas pipeline companies	
Railroad companies	Wetland mitigation or stream restoration bank projects

Applies to these activities

Construction, installation, or maintenance of:

- Electric transmission lines
- Water and sewer lines
- Natural gas lines
- Telephone utility lines

Railroad company construction of:

- Tracks
- Bridges
- Other related structures and facilities
- Rights-of-way
- Communication facilities

The Board has the authority to enforce the approved specifications and charge fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

State agency and federal entity projects

(VA Code [§62.1-44.15:56](#))

State agency LDAs can either be conducted in accordance with DEQ approved annual standards and specifications, or the agency must submit an ESC plan to DEQ for review and approval before starting land disturbance. Federal entities may also submit annual standards and specifications.

★ State agencies or federal entities with DEQ approved annual standards and specifications and that have Board approval to operate as a VESCP authority, can conduct plan review, approval, and inspections of LDAs.

ESC plans for state agencies or federal entities must:

- Be consistent with the requirements of the VESCL and attendant regulations
- Be consistent with the more stringent requirements of a locality's VESCP where the land disturbance will occur, unless the locality has not submitted a copy of its local program requirements to DEQ

When federal entities submit an ESC plan to DEQ, land disturbance cannot start until DEQ has reviewed and approved the plan.

DEQ has [60 days](#) to comment on any standards and specifications or erosion and sediment control plan. As onsite changes occur, the state agency shall submit changes in an ESC plan to the Department.

★ The state agency responsible for the LDA must ensure compliance with the approved plan, and DEQ and the Board, where applicable, shall provide project oversight and enforcement as necessary.

Annual standards and specifications for wetland mitigation or stream restoration bank

(VA Code [§62.1-44.15:55](#))

Any person engaging in the creation and operation of a wetland mitigation or stream restoration bank(s) that spans more than one jurisdiction, has been approved, and is operating in accordance with all requirements, may file general erosion and sediment control standards and specifications for wetland mitigation or stream restoration banks [annually](#) with DEQ with review and approval.

DEQ has [60 days](#) to approve the specifications. If no action is taken by the Department within the 60 days, the specifications are deemed approved. As stated earlier, project activities covered under the specifications do not need individual approval. Project activities not covered must comply with the requirements of the local VESCP.

The Board has the same authority as stated earlier for enforcing the approved specifications and charging fees equal to the lower of (i) \$1,000 or (ii) an amount sufficient to cover the costs associated with standard and specification review and approval, project inspections, and compliance.

Cooperation with federal and state agencies

(VA Code [§62.1-44.15:61](#))

A VESCP authority and the Board are authorized to cooperate and enter into agreements with any federal or state agency in connection with the requirements for erosion and sediment control with respect to land-disturbing activities

4c. Approved Plan Requirements

Before land disturbance can start on a project that does not have DEQ approved annual standards and specifications, the VESCP authority must review and approve an ESC plan or execute an agreement in lieu of an ESC plan for the construction of a single-family residence.

★ Starting July 1, 2014, **before** the VESCP authority can provide authorization to start land disturbance, LDAs subject to the Virginia Stormwater Management Act must obtain state permit coverage, if required, and local VSMP authority permit coverage.

Review of erosion and sediment control plan

(VA Code [§62.1-44.15:55](#))

Adequate ESC plan

The VESCP authority has **60 days** to review an adequate ESC plan and grant written approval. An adequate ESC plan satisfies the following:

- Requirements of the VESCL and regulations
- Person responsible for carrying out the plan certifies they will properly perform the ESC measures included on the ESC plan and will comply with the VESCL

If the VESCP authority does not take action on an ESC plan within 60 days then the plan is deemed approved and the person is authorized to start land disturbance.

Before land disturbance can start, the name of the responsible land disturber (RLD) must be provided to VESCP authority. The VESCP authority may waive the RLD requirement for an agreement in lieu of a plan for the construction of a single-family residence. Failure to provide the name of the RLD before starting land disturbance may result in the revocation of the approval of the ESC plan and the person responsible for carrying out the plan shall be subject to the penalties outline in the VESCL.



Responsible land disturber or RLD means an individual holding a certificate issued by the department who is responsible for carrying out the land-disturbing activity in accordance with the approved ESC plan. The RLD may be the owner, applicant, permittee, designer, superintendent, project manager, contractor, or any other project or development team member. The RLD must be designated on the ESC plan or permit as a prerequisite for engaging in land disturbance.

([9VAC25-850-10](#))

Inadequate ESC plan

The VESCP authority has [45 days](#) to review an inadequate ESC plan and provide written notice of disapproval stating the specific reason for disapproval, including the modifications, terms, and conditions that will permit approval of the plan.

Resubmitted ESC plan

The VESCP authority has [45 days](#) to review and approve a revised ESC plan that was previously disapproved and is deemed adequate.

See graphic on next page for a comparison of the VESCP and VSMP plan approval process.

Comparison of VSMP and VESCP Plan Approval Process



Changes to approved ESC plan

(VA Code §62.1-44.15:55)

The VESCP authority may require changes to an approved ESC plan when:

- Inspections show the plan is inadequate
- Circumstances on the land disturbing activity have changed and the approved ESC plan cannot be carried out and the changes are agreed upon by the VESCP authority and the person responsible for carrying out the plan

Variances

(9VAC25-840-50)

The VESCP authority may waive or modify any of the requirements that are deemed inappropriate or too restrictive for site conditions, by granting a variance. Variance requests must be considered judiciously, and the VESCP authority should take a conservative and responsible approach, keeping in mind the need to protect the environment from damage due to soil erosion, sediment deposition, and nonagricultural runoff. Variances will only pass muster when they are reasonable and supported by site-specific rationale. A variance may be granted under these two conditions:

The VESCP authority shall consider variance requests judiciously, keeping in mind both the need of the applicant to maximize cost effectiveness and the need to protect off-site properties and resources from damage.

(9VAC25-840-50)

1. At time of plan submission, applicant can request a variance to become a part of the approved ESC plan
 - Applicant explains reasoning to VESCP authority in writing
 - VESCP authority documents variance on plan
2. During construction, person responsible for implementing approved plan can request a variance
 - Request made in writing to VESCP authority

- VESCP authority approves or disapproves request
 - If no response from VESCP authority within 10 days, request is disapproved
 - Applicant may resubmit a variance request with additional documentation
- ★ If an ESC Plan is incorporated by reference into a stormwater pollution prevention plan (SWPPP) under the Construction General Permit, any required elements of the SWPPP that are missing from the ESC plan because of a variance must be developed and included in the SWPPP.

ESC plan requirement for erosion impact area

(VA Code [§62.1-44.15:55](#))

To prevent further erosion, a VESCP authority may require approval of an ESC plan for any land identified by the VESCP authority as an erosion impact area, which is defined as an area of land not associated with current land-disturbing activity but subject to persistent soil erosion resulting in the delivery of sediment onto neighboring properties or into state waters. This definition does not apply to any lot or parcel of land of 10,000 square feet or less used for residential purposes or to shorelines where the erosion results from wave action or other coastal processes.

Multi-jurisdictional projects

(VA Code [§62.1-44.15:55](#))

When a LDA covers more than one VESCP authority's jurisdiction, one or all of the authorities can request to have DEQ review the ESC plan rather than have the ESC plan submitted to each jurisdiction. DEQ may charge the jurisdiction(s) requesting the review a fee to cover associated costs.

Another alternative for multi-jurisdictional projects is for the VESCP authority with the smaller portion of the project to enter into an agreement with an adjacent VESCP authority regarding all or part of the project's administrative procedures.

Permit(s) issuance

(VA Code §62.1-44.15:57)

Before any agency can issue grading, building, or other permits for activities involving LDAs regulated under the VESCL, the applicant must include an approved ESC plan and certification that the plan will be followed, and evidence of local VSMP authority permit coverage where it is required.

Security for performance

(VA Code §62.1-44.15:57)

Before issuing any permit (grading, building, etc.), the permit issuing agency may require an applicant to submit a reasonable performance bond to ensure that measures could be taken by the agency at the applicant's expense should they fail to initiate or maintain appropriate conservation action (included on approved ESC plan) as a result of their land-disturbing activity.

If the agency takes conservation action and it costs more than the security held, they can collect the difference from the permittee.

Refund of security:

Within 60 days of achieving adequate stabilization in any project or section of project, the unexpended or unobligated portion must be refunded to the applicant or terminated based upon the percentage of stabilization accomplished in the project or section of project.

4d. Inspections and Enforcement

Regular inspections during all phases of a land disturbing activity are important for ensuring that all ESC measures on the approved plan are installed or maintained correctly.

Inspection frequency

(VA Code [§62.1-44.15:58](#) and [9VAC25-840-60](#))

In accordance with the VESCP regulations, the VESCP authority must either:

1. Provide for an inspection during or immediately following initial installation of erosion and sediment controls, at least once in every two-week period, within 48 hours following any runoff producing storm event, and at the completion of the project prior to the release of any performance bonds; **or**
2. Establish an alternative inspection program which ensures compliance with the approved erosion and sediment control plan. Any alternative inspection program shall be:
 - a. Approved by the board prior to implementation;
 - b. Established in writing;
 - c. Based on a system of priorities that, at a minimum, address the amount of disturbed project area, site conditions and stage of construction; and
 - d. Documented by inspection records

★ Remember, a statement describing the maintenance responsibilities of the permittee must be included in the approved ESC plan ([9VAC25-840-60](#)).

Right of Entry

(VA Code [§62.1-44.15:60](#))

DEQ, the VESCP authority or any authorized agent of DEQ or the VESCP authority has the right to enter any property to conduct inspections of the LDA at reasonable times and under reasonable circumstances.



Inspection documentation is a critical component of any compliance program. Documentation, such as an inspection report, can prove or support an inspector's claims of alleged violations.

In accordance with a performance bond with surety, cash escrow, letter of credit, any combination thereof, or other legal arrangement, a VESCP authority may also enter any establishment or upon any property for the purpose of initiating or maintaining appropriate actions that are required by the permit conditions associated with a LDA when a permittee, after proper notice, has failed to take acceptable action within the time specified.

Monitoring and reports

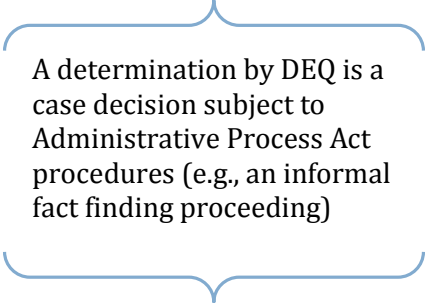
(VA Code [§62.1-44.15:58](#))

The VESCP authority may require monitoring and reports from the person responsible for carrying out ESC plan to determine whether the measures required in the plan are effective in controlling erosion and sediment.

Notice to comply

(VA Code [§62.1-44.15:58](#))

After conducting inspections, if the VESCP authority or DEQ determines that there is a failure to comply with the approved ESC plan, or failure to properly install/maintain erosion and sediment control measures specified by inspection reports, a notice to comply may be served upon the permittee or person responsible for carrying out the plan.



A determination by DEQ is a case decision subject to Administrative Process Act procedures (e.g., an informal fact finding proceeding)

How to serve a notice to comply:

- Mailing with confirmation of delivery to the address specified in the permit application or in the plan certification, or
- Delivery at the site of the land-disturbing activities to the agent or employee supervising such activities

Notice to comply must include:

- Measures needed to comply with the ESC plan
- Time within which such measures shall be completed

If failure to comply within time specified in notice to comply:

- Permit may be revoked
- VESCP authority, DEQ, or the Board may pursue enforcement action:
 - Penalties, injunctions or other legal actions (§ [62.1-44.15:63](#))
 - The enforcement options available to a VESCP authority will depend on whether the VESCP authority has adopted an ordinance providing for civil penalties instead of criminal sanctions (instead of prosecution as a misdemeanor)
- VESCP authority or DEQ may issue a stop work order

Stop work order after a DEQ or VESCP authority inspection

(VA Code §[62.1-44.15:58](#))

Reason:

A stop work order can be issued by the VESCP authority or DEQ in the following three scenarios after an inspection report denotes a violation of VA Code §§ 62.1-44.15:55, :56, or :58.

- Scenario 1: Failure to comply with an ESC plan (documented in inspection reports), followed by issuance of a notice to comply, and then failure to implement corrective measures within the timeframe stated in the notice to comply
- Scenario 2: LDA started without an approved ESC plan or required permits
- Scenario 3: Alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth

As explained below, different procedural steps are required to issue stop work orders for each of these scenarios.

Steps for issuing a stop work order:

Scenario 1:

When there is a failure to implement corrective measures within the timeframe stated in the notice to comply, the following steps must be taken to issue a stop work order:

1. Issue inspection report denoting potential violation(s)
2. Issue notice to comply (in accordance with Administrative Process Act if issued by DEQ)
3. Violator fails to comply with notice to comply
4. Issue stop work order (in accordance with Administrative Process Act if issued by DEQ)
5. Mail stop work order with confirmation of delivery to address specified in permit application or plan certification, or hand delivered at the site of LDA

The LDA must stop on all or part of the site until specific corrective measures listed in notice to comply are taken. The stop work order remains in effect for 7 days from the date of service.

Scenario 2:

When the LDA has started without an approved ESC plan or required permits, a notice to comply is not required prior to issuing a stop work order. If issued by DEQ, the stop work order must be issued in accordance with the Administrative Process Act. The stop work order must be mailed with confirmation of delivery to the address specified in the land records of the locality **and** posted on the site where the disturbance is occurring. The LDA must stop on the entire site and the order remains in effect until the ESC plan is approved and required permits are secured.

If alleged violator has not obtained an approved ESC plan or required permit within **seven days**, DEQ or chief administrative officer on behalf of the VESCP authority, may issue a subsequent order to the owner requiring that **all construction and other work on the site**, other than corrective measures, be stopped until an approved ESC plan and any required permits have been obtained.

Scenario 3:

When the alleged noncompliance is causing or is in imminent danger of causing harmful erosion of lands or sediment deposition in waters within the watersheds of the Commonwealth, a notice to comply is not required prior to issuing a stop work order. The law does not specify procedures for serving an emergency stop work order and does not indicate how long it remains in effect.

Appealing a stop work order

(VA Code [§62.1-44.15:58](#))

The owner may appeal the issuance of a stop work order to the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court.

Any person violating, failing, neglecting, or refusing to obey a stop work order issued by DEQ or the VESCP authority may be compelled in a proceeding instituted in the circuit court of the jurisdiction wherein the violation was alleged to have occurred or other appropriate court to obey the stop work order and to comply therewith by injunction, mandamus, or other appropriate remedy.

Lifting a stop work order

(VA Code [§62.1-44.15:58](#))

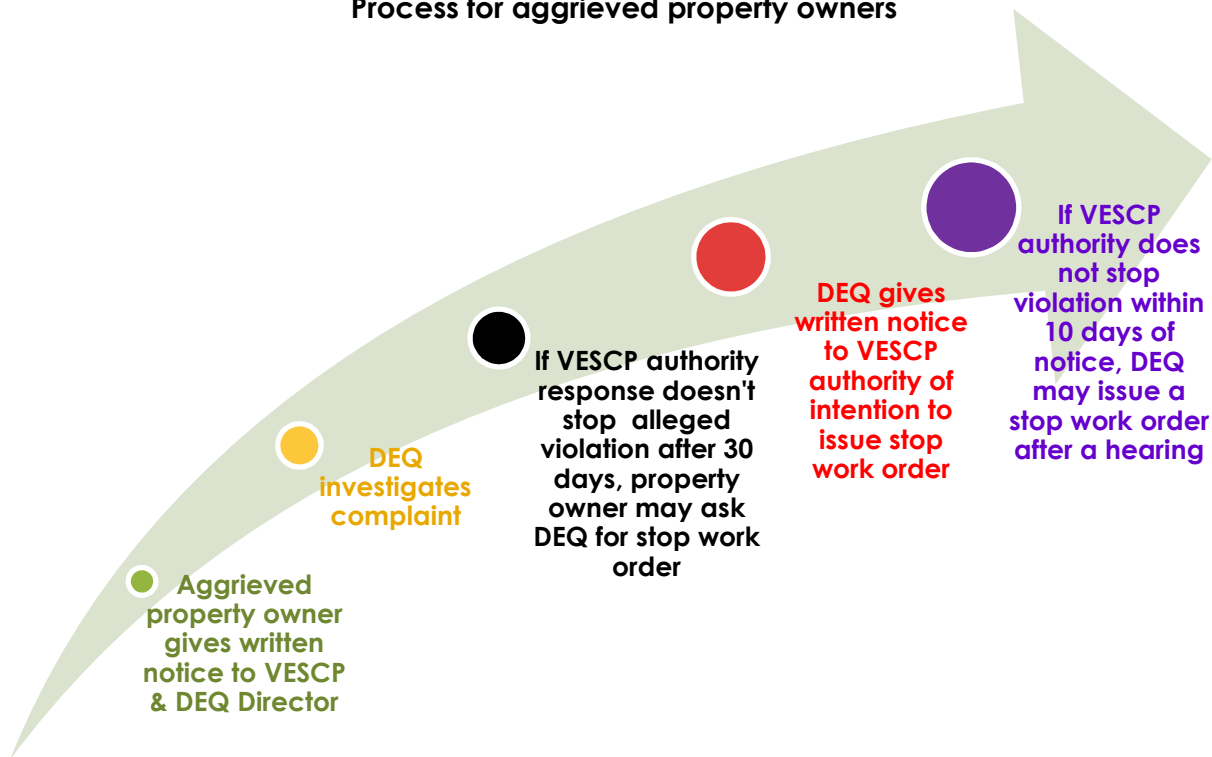
Upon completion and approval of corrective action or obtaining an approved plan or any required permits, the stop work order shall immediately be lifted. Nothing in this section shall prevent DEQ, the Board, or the chief administrative officer or his designee on behalf of the VESCP authority from taking any other action specified in [§ 62.1-44.15:63](#) (penalties, injunctions and other legal actions).

Stop work order process when owner of damaged property contacts DEQ

(VA Code [§62.1-44.15:64](#))

The graphic below outlines the procedure that aggrieved property owners need to follow if seeking a stop work order from DEQ for an alleged violation.

Process for aggrieved property owners



★DEQ may issue an emergency stop work order without advance notice or hearing in cases of imminent danger. After issuing an emergency stop work order, DEQ must provide an opportunity for a hearing, after reasonable notice as to the time and place thereof, to such person, to affirm, modify, amend, or cancel such emergency order.

If a person who has been issued an order or emergency order is not complying with the terms the Board may institute a proceeding in the appropriate circuit court compelling the person to comply with such order. If the person still does not comply, then they shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. Any civil penalties assessed by a court shall be paid into the state treasury.

Judicial Appeals

(VA Code [§62.1-44.15:62](#))

A final decision by a county, city, or town, when serving as a VESCP authority, is subject to judicial review, provided that an appeal is filed within [30 days](#) from the date of any written

decision adversely affecting the rights, duties, or privileges of the person engaging in or proposing to engage in land-disturbing activities.

Final decisions of the Board, DEQ, or district shall be subject to judicial review in accordance with the provisions of the Administrative Process Act (§ 2.2-4000 et seq.).

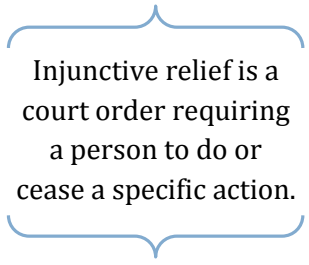
Injunctive relief (court ordered)

(VA Code §62.1-44.15:63)

A VESCP authority, DEQ, or the owner of property that has sustained damage or which is in imminent danger of being damaged may apply for injunctive relief to the circuit court wherein the land lies or other appropriate court without having to show that an adequate remedy at law does not exist.

Before apply for injunctive relief, the property owner must notify the following people/entities in writing that a violation of the VESCP has caused, or creates a probability of causing, damage to their property:

- The person who has allegedly violated the VESCP
- DEQ
- VESCP authority



Injunctive relief is a court order requiring a person to do or cease a specific action.

Additionally, before the aggrieved property owner applies for injunctive relief, neither the person who has allegedly violated the VESCP, DEQ, nor the VESCP authority must have taken corrective action within 15 days to eliminate the conditions that have caused, or create the probability of causing, damage to their property.

Adopting civil penalties through ordinances or regulation

(VA Code §62.1-44.15:54)

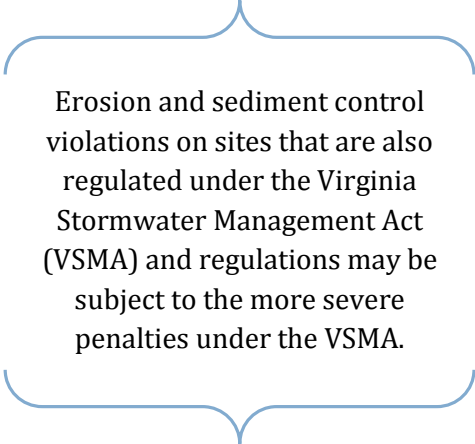
Civil penalties can be assigned by the VESCP for any violation of the following:

- VESCL
- Regulations
- Order of the Board
- Program requirements
- Permit conditions

Penalty requirements:

- Civil penalty for one violation must be between \$100 and \$1,000 (inclusive)
- Each day of violation is a separate offense
- Total for specific violation over time cannot exceed \$10,000

★ Adoption of an ordinance for violations that are subject to a civil penalty replaces criminal sanctions and the prosecution of such violation as a misdemeanor (discussed below).



Erosion and sediment control violations on sites that are also regulated under the Virginia Stormwater Management Act (VSMA) and regulations may be subject to the more severe penalties under the VSMA.

Civil penalties

(VA Code §62.1-44.15:63)

Civil penalties are assessed by the court in accordance with the requirements in Table 3-4 below.

Civil Penalties Table 3-4		
Behavior	Assessing penalty	Penalty
Violated, failed, neglected or refused to obey any of the following: VESCL Regulations or order of the Board Local VESCP authority order, notice or requirement DEQ order, notice or requirement Permit	Court assess civil penalty	In accordance with VESCP authority schedule of civil penalties, if adopted (Subsection K of § 62.1-44.15:54, discussed above) Penalties assessed by court paid into treasury of locality where project located If locality or its agent is the violator, penalties paid into state treasury

★ In any trial for a scheduled violation, it shall be the burden of the locality or Department to show the liability of the violator by a preponderance (majority) of the evidence.

Civil penalty issued by the court

(VA Code §62.1-44.15:63)

Any person violating or failing, neglecting, or refusing to obey any injunction, mandamus, or other remedy obtained pursuant to this section shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,000 for each violation. A civil action for such violation or failure may be brought by the VESCP authority wherein the land lies or DEQ.

Consent orders and payment of civil charges

(VA Code §62.1-44.15:63)

With the consent of the person being assessed civil charges, the Board, DEQ, or the VESCP authority may provide, in an order issued by the Board or VESCP authority against such

person, for the payment of civil charges for violations in specific sums, not to exceed \$2,000 for each violation. Such civil charges are instead of civil penalties or civil action.

Misdemeanors

(VA Code §62.1-44.15:63)

Violators of the VESCL shall be guilty of a Class 1 misdemeanor (confinement in jail for not more than twelve months and/or a fine of not more than \$2,500) unless the VESCP authority has adopted an ordinance for civil penalties (discussed above and in Module 3.b.1).

Attorney general

(VA Code §62.1-44.15:63)

Upon request of a VESCP authority, the attorney for the Commonwealth shall take legal action to enforce the provisions of this article. Upon request of the Board, DEQ, or the district, the Attorney General shall take appropriate legal action on behalf of the Board, DEQ, or the district to enforce the provisions of this article.

4e. DEQ Compliance Review of a VESCP

The VESCL requires DEQ to review and evaluate the effectiveness of VESCPs (VA Code §§62.1-44.15:52 and :54)

After completing a VESCP compliance review where deficiencies are found, DEQ will provide results and compliance recommendations to the Board in the form of a corrective action agreement. The Board will then establish a schedule for the VESCP authority to come in compliance.

If the authority has not implemented the necessary compliance actions within the required timeframe, the Board has the authority to:

- Issue a special order to any VESCP, imposing a civil penalty not to exceed \$5,000 per day with the maximum amount not to exceed \$20,000 per violation;
- Revoke its approval of the VESCP; or
- Take legal action against the VESCP to ensure compliance

Revoked approval of VESCP

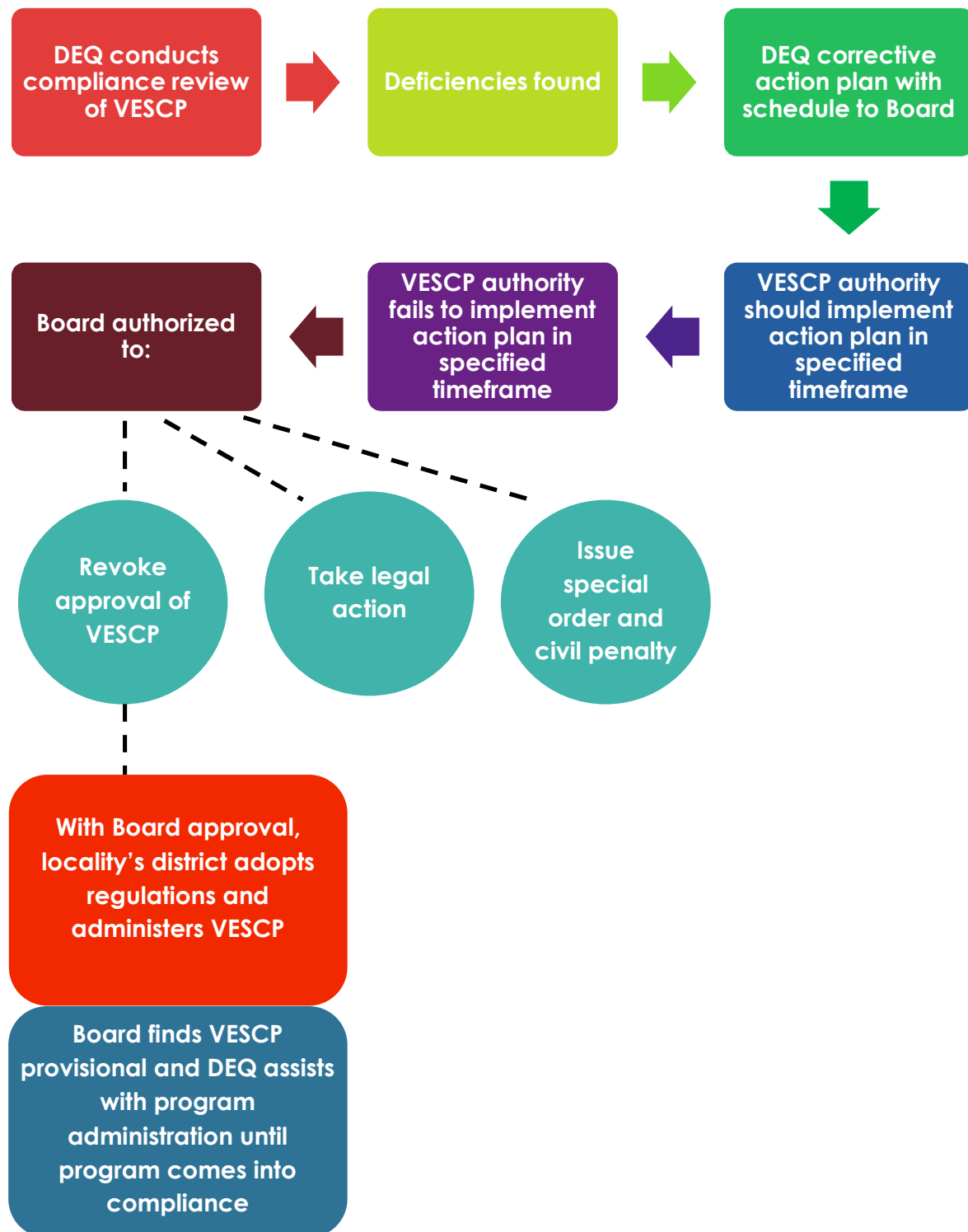
(VA Code §62.1-44.15:54)

If the Board revokes the approval of the VESCP of a county, city, or town, and the locality is in a district, the Board will approve the district to take over the program and it will adopt regulations to carry out the program.

If the Board revokes its approval of a VESCP of a district, or of a county, city, or town not in a district, or finds that a local program has not been adopted when required, the Board shall find the VESCP authority provisional, and DEQ will assist with the administration of the program until the Board finds the VESCP authority compliant.

If the Board revokes its approval of a state entity, federal entity, or a linear project subject to annual standards and specifications the Board shall find the VESCP authority provisional, and have the Department assist with the administration of the program until the Board finds the VESCP authority compliant with the requirements of this article and associated regulations.

Example compliance review process and Board action for a locality found to have a non-compliant VESCP





Knowledge Check

1. Starting July 1, 2014, LDAs subject to the Virginia Stormwater Management Act must have what approved before a VESCP authority can authorize the start of land disturbance?
 - a. Agreement in lieu of an erosion and sediment control plan
 - b. Annual standards and specifications
 - c. Responsible land disturber
 - d. Stormwater management plan
2. Which of the following is not a function of the Board?
 - a. Develop regulations
 - b. Adopt minimum standards
 - c. Approve VESCP authorities
 - d. Administer training programs
3. True or False. Localities may adopt more stringent ordinances if they are necessary to address TMDL requirements?
 - a. True
 - b. False
4. How long does the VESCP authority have to review an ESC plan?
 - a. 30 days from submission for inadequate plans
 - b. 40 days for resubmitted plans
 - c. 45 days before the bond is posted
 - d. 60 days from submission of adequate plans
5. What must the VESCP authority do after conducting an inspection where it determined there was a failure to comply with the approved ESC plan?
 - a. Revoke the permit
 - b. Require the ESC plan to be resubmitted
 - c. Serve notice upon the permittee or person responsible for carrying out the plan
 - d. Assess a civil penalty

6. Under the VESCL, what is the limit for a civil action brought by DEQ for a VESCP violation?
- a. \$2,000/day
 - b. \$32,500/violation
 - c. \$1,000/day
 - d. \$2,000/violation
7. A stop work order remains in effect for how many days?
- a. 1
 - b. 3
 - c. 7
 - d. Until compliance